

MARYLAND EMPLOYERS FOR CIVIL JUSTICE REFORM COALITION

INFORMATIONAL TESTIMONY ON SB 950

Conversion Therapy – Prohibitions and Causes of Action

Maryland Employers for Civil Justice Reform Coalition, comprised of many of the largest employers, businesses, and health care providers in Maryland, hereby provides this letter of information on SB 950. Respecting the views of proponents and opponents of SB 950, the Coalition takes no position on the issue of conversion therapy. However, among the many provisions in this bill is a full repeal of Maryland's noneconomic damages caps for injuries arising from conversion therapy. The Coalition offers the following information in connection with this provision.

Persons in Maryland injured as a result of conversion therapy may deserve compensation, just as persons in Maryland deserve compensation for personal injuries attributable to the negligent acts of others. The Coalition's concerns are focused on the single provision in the bill, on page 9, lines 16-19, which would exempt persons injured as a result of conversion therapy from Maryland's long-standing caps on non-economic damages. For the reasons explained below, exempting one narrow class of plaintiffs from these important caps will erode and eventually eliminate a critical cost containment policy that benefits Maryland taxpayers and consumers who purchase liability insurance.

Historical Context

Caps on noneconomic damages have been an important public policy in Maryland for 40 years. Back in 1985, when the State faced a liability insurance crisis, two task forces were created to conduct a careful study of the problem and recommend solutions. One of those groups, the Governor's Task Force to Study Liability Insurance, concluded in its 1985 Report:

The current availability and affordability crisis in certain lines of insurance... is not a manufactured crisis, as some have charged... The civil justice system can no longer afford unlimited awards for pain and suffering.

The ceiling on noneconomic damages will help contain awards within realistic limits, reduce the exposure of defendants to unlimited damages for pain and suffering, and lead to more accurate [insurance] rates because of the greater predictability of the size of the judgments. The limitation [cap] is designed to lend greater stability to the insurance market...

A cap on allowable pain and suffering awards will help reduce the incidence of unrealistically high liability awards, yet at the same time protect the right of the injured party to recover the full amount of economic loss, including all lost wages and medical expenses.¹

The Senate Judicial Proceedings Committee helped craft the 1986 legislative solution to the crisis, noting in its Committee Report that the legislative purpose was “assuring the availability of sufficient liability insurance, at a reasonable cost, in order to cover claims for personal injury.”

Impact of SB 950’s Provision Removing the Non-Economic Damage Cap

The Coalition’s concern with the cap removal provision in SB 950 is that making an exception for one class of plaintiffs – those who are injured by conversion therapy – allows other plaintiffs in all other personal injury actions to argue to a court for a judicial repeal of the cap on all other tort actions, on the grounds of equal protection. Treating one class of plaintiffs one way, and another class of plaintiffs another way, creates the conditions for overturning the cap on all tort actions because of the discriminatory effect it could have on those plaintiffs with injuries not attributable to conversion therapy.

In light of the origin and 40-year history of the current caps on noneconomic damages, why *ever* would the General Assembly want to risk inviting back the insurance crisis of 1985 by enacting a provision that could lead to the elimination of these caps? This origin and history explains why well more than a dozen legislative proposals to repeal or erode the cap have failed each and every legislative session since first introduced back in the early 2000s.

A central reason favoring the preservation of caps on noneconomic damages has always been that these damages, for pain and suffering and other nonpecuniary injuries, are difficult to quantify. Quite simply, these damages involve no direct economic loss and have no precise monetary value. Given the emotional sensitivities and differing perspectives surrounding these injuries, courts and juries often struggle to calculate fair and rational awards. This would be especially true in the case of quantifying damages for the potential physical and psychological injuries that could result from conversion therapy. Caps have proven to be the correct and best public policy to balance the need for recovery for injuries with the avoidance of unrealistically high and excessive awards. For these reasons, more than half the states have caps currently in effect on noneconomic damages.

Maryland’s Current Non-Economic Damages Caps Are Reasonable

The caps were originally set at \$350,000 when first enacted in 1986, and then in 1994 they were raised to \$500,000 and tied to an annual escalator of \$15,000 to adjust for inflation. Today, these inflation-adjusted caps in non-medical personal injury actions have risen to \$965,000 for the injured party. In most other states with caps, the caps range from \$250,000 to \$1,000,000, placing Maryland at the top of the range among the states.

Significantly, the caps do not end at \$965,000, they go higher under current law. In wrongful death cases, pain and suffering can be recovered on behalf of the person who died as a result of the negligent conduct, and in addition, two or more beneficiaries, such as immediate

¹ *Franklin v. Mazda Motor Corp.*, 704 F. Supp. 1325, 1328 (D. Md. 1989) (quoting the Report of the Governor’s Task Force to Study Liability Insurance, issued Dec. 20, 1985). This issue also studied in 1985 by the Joint Executive/Legislative Task Force on Medical Insurance, resulting in a similar recommendation for statutory limits or caps.

family members, can also recover noneconomic damages in wrongful death cases. Accordingly, in actions where a person is alleged to have died as a result of negligence, the total availability of noneconomic damages in Maryland is up to \$2,412,5000 (\$965,000 for the decedent, plus \$1,447,500 for the immediate family). Noneconomic damages are not even a sole remedy, as damages for the full and unlimited amount of *economic* losses, together with *punitive* damages that are unlimited under Maryland law, are also available to plaintiffs in these actions. Clearly, the rights of injured parties to recover for their injuries are protected under current law.

Consequences if the Overall Cap on Non-Economic Damages is Eliminated

Insurance costs for consumers and businesses will increase, as determined by the Maryland Insurance Administration (MIA) and the National Association of Insurance Commissioners. Legislation introduced in 2024, SB 538, as amended, would have raised the cap to \$1,750,000, producing insurance premium increases of 15.7% to 21.4% across all liability lines, according to an independent actuarial analysis.² SB 950's outright repeal of the cap – should it lead to the full repeal of the cap in all tort actions – would produce much larger adverse impacts on insurance costs.

The Coalition appreciates the opportunity to provide this information in connection with SB 950.

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² *Analysis of the Impact of Increasing Maryland's Economic Damages Cap*, Pinnacle Actuarial Resources, Inc., April 3, 2024 (actuarial analysis of Maryland insurance rates (all lines) conducted on a noneconomic damages cap of \$1,750,000 and an annual escalator of \$20,000).